

April 13, 2007

**NOTE:** The Department has edited the following letter to preserve the anonymity of the parties involved. Please note that the exception described only applies to these parties.

**Re: Acceptable Documentation for Proof of Targeted Employment Area Pertaining to Employees of Shippers Associated With a Specified Shippers Association.**

Dear Mr./ Ms. Coordinator:

The purpose of this letter is to provide your Enterprise Zone with guidance on voucher applications that a specified consulting firm, will submit on behalf of various shipper clients associated with a *specified* shippers association, hereafter called the "Association". Based on a review of the methodology used to document the eligibility status of employees for these shippers, the Department of Housing & Community Development (Department) has determined that their voucher applications qualify for an exception to the documentary requirements for the Targeted Employment Area (TEA) category.

Overview

On behalf of its clients, a consulting firm recently requested an exception to the documentary requirement for a Federal Form I-9 (I-9) form for the TEA category. Specifically, it contended that acceptance of this form would produce an erroneous result for applications submitted on behalf of various shippers. The consulting firm stated that due to the employment structure of the shipping business, the I-9 form did not always identify the address of the employee at the date of hire. Instead, the consulting firm proposed that the Department accept for its shipping clients an employee's pay-check stub as a viable substitute for the I-9 form. To demonstrate that the stub accurately identified the employee's address at the date of hire, it showed the Department a proprietary database that contained extensive data on various shippers' employees. Through various tests, the Department concluded that the database appeared to accurately show whether an employee's I-9 form or pay-check stub provided the address at the date of hire.

The following section provides background on the Association's administrative role for the shippers. The final sections describe the review that the Department conducted to determine whether it would accept the substitute documentation, and the specific conditions that must be present in order for Enterprise Zones to apply the exception.

## Background

According to the consulting firm, the Association is in the principal business of negotiating and administering maritime labor agreements with a representing union . As part of this role, the Association processes weekly payrolls for shoreside workers from the remittances made by its members. The membership of the Association consists of American flag and foreign flag shippers as well as stevedore and terminal companies that operate in USA pacific coast ports..

Pursuant to the enactment of state legislation (the Central Pay Office Act) and a federal grant of permission in the 1940s, the Association is the “designated payroll agent” for its members. Each Association member company reports to the Association its own payroll and each association member company is responsible for its payroll related taxes based on the amount of payroll associated with representing union workers employed by the member company during the year.

To begin an employment relationship with an Association member company, an individual is required to complete a single I-9 to validate his or her eligibility to work in the United States. Although the individual may work for more than one Association member company over time, the individual will not fill out another I-9 during his or her association with the represented union. Instead, the Association uses the original I-9 as evidence of that employee’s eligibility to work for all of the Association member companies.

As part of its administrative role, the Association also coordinates the payroll for its members. Specifically, each Association member company submits each employee’s payroll for each day to the Association, which in turn issues the employee a single pay check once a week and a single W-2 at the end of the year. The Association adheres to this practice even though the employee may work for various shippers during the same week. That is, the Association combines all of the hours worked by that employee during the week and issues a single pay check for the week, regardless of the number of shippers who employed the employee over this period.

Because the Association maintains the payroll for its members, it also tracks the addresses of employees. According to the consulting firm, the Association must maintain tight control over these addresses because it relies on them to communicate with the employees. Due to the nature of the work, employees are not always at a central location during the day. As a result, the primary method of communication between the Association and the employees is through the mail. Consequently, the accuracy of the address is critical to the employee. For example, if the Association contacts an employee regarding a union issue, and the employee does not respond to the letters sent to the address on file, the union will suspend the employee’s work eligibility status. To ensure that an employee reports a new mailing address, the Association requires the employee to complete and sign a new Federal Form W-4 before it will update its systems. As an example of the accuracy of the Association’s address listing, the specified consulting firm indicated that

the Association reported that only about 250 of 26,000 (or about one percent) of the W-2s it mailed in 2007 were returned as undeliverable.

#### Applicability of TEA Requirement to the Association's Documentary Processes

To obtain a voucher for the hiring tax credit under the eligibility category of Targeted Employment Area (TEA), an applicant must demonstrate that the employee was a resident of the TEA at the time of hire. Section 8466(p) of Title 25 states that acceptable documentation for this category includes the Form I-9. However, because the Association only maintains a single I-9 for each employee even though he or she may have more than one employer, and therefore, more than one start date, it appears that the I-9 would not always indicate an employee's current address at the date of hire.

According to the consulting firm, when the employee goes to work for the new employer, the employer must examine the employee's address to determine if it is a qualified TEA address. If the address qualifies as a TEA address, the employer must obtain documents to support this claim. Because the employee does not complete a new I-9 for each employer and the specified Association maintains only the original I-9, the employers must rely on other documentation to substantiate the employee's address. Based on evidence presented by the consulting firm, a more reliable source is the employee's pay-check stub. Unlike the information presented on the I-9, the employee must continually update the address maintained by the specified shippers association. As a result, it should more accurately represent the employee's address at any point in time. Because the pay check stub includes the employee's address, it, therefore, documents the address at the date of payment. If this date coincides with the date of hire, the address on the pay-check stub can support the employee's area of residency.

#### Assessment of Employee Database

Based on the information provided by the consulting firm, it appeared that the Association's pay-check stub represented acceptable evidence of an employee's address. However, because the consulting firm relied on its database to match each employee's date of hire to its corresponding address on this date, we reviewed the database to determine its reliability. For this review, we examined from the database a sample of 20 employee records for the period of 2006. For each employee record, we traced the date of hire to a copy of the employee's I-9 form or a corresponding pay-check stub for the same period. From this review, we found that the database accurately identified the address on the date of hire based on either the I-9 form or a pay-check stub. Subsequently, it appeared that the consulting firm could use the database to identify the appropriate document, I-9 or pay-check stub, that corresponded to the employee's address on the date of hire.

### Conditions for Application of Exception

Based on the factors cited above, the Department considers the use of the address on a pay-check stub as acceptable evidence of an employee's residence at the time of hire provided all of the following facts apply:

1. The Association issued the pay check.
2. The pay period on the pay-check stub coincides with the employee's date of hire.
3. The consulting firm submitted the voucher application on behalf of the shipping company, thereby assuring the State that it used its proprietary database to determine that the address on the pay-check stub represented the employee's address on the date of hire.

Once the vouchering agent accepts the address on the pay-check stub as evidence of the employee's residence, the agent must verify that the address is within the boundaries of a Targeted Employment Area. The agent may approve the voucher only when this final condition is met.

### Right To Modify Exception

The Department reserves the right to modify or withdraw the exception noted above. In addition, the Department retains the right to review the consulting firm's database at any time to verify its accuracy and completeness.

If you have any questions about this action, please call me at (916) 327-2862.

Sincerely,

Frank Luera, Chief  
State Enterprise & Economic Development Section  
Department of Housing & Community Development